



State of Idaho

Legislative Services Office

Management Report

A communication to the Joint Finance-Appropriations Committee

OFFICE OF THE SECRETARY OF STATE

IDAHO CODE COMMISSION

COMMISSION ON UNIFORM LAWS

FY 2011, 2012, AND 2013

Report MR13013

Date Issued: April 30, 2015

Serving Idaho's Citizen Legislature



Idaho Legislative Services Office
Legislative Audits Division

OFFICE OF THE SECRETARY OF STATE
IDAHO CODE COMMISSION
COMMISSION ON UNIFORM LAWS

April Renfro, Manager

SUMMARY

PURPOSE OF MANAGEMENT REVIEW

We conducted a management review of the Office of the Secretary of State (Office) covering the fiscal years ended 2011, 2012, and 2013. Our review covered general administrative procedures and accounting controls to determine that activities are properly recorded and reported.

The intent of this review was not to express an opinion but to provide general assurance on internal controls and to raise the awareness of management and others of any conditions and control weaknesses that may exist and offer recommendations for improvement.

CONCLUSION

We identified deficiencies in the general administrative and accounting controls of the Office.

FINDINGS AND RECOMMENDATIONS

There are two findings and recommendations in this report.

Finding 1 – The Office is not assessing liabilities as required by Idaho Code Section 67-6625A.

Finding 2 – Internal control weaknesses exist in federal grant accounting and program compliance.

The complete findings are detailed on pages 1 through 3 of this report.

PRIOR FINDINGS AND RECOMMENDATIONS

The prior management report contained two findings and recommendations which were evaluated as part of the current review.

Finding 1 was satisfactorily closed after evaluation during the current review.

Finding 2 was closed and repeated as Finding 2 in the current report.

A copy of the prior report is available at <http://www.legislature.idaho.gov/audit/auditsummaries.htm> or by calling 208-334-4832.

AGENCY RESPONSE

The Office has reviewed the report and is in general agreement with the contents.

FINANCIAL INFORMATION

The following financial data is for informational purposes only.

OFFICE OF THE SECRETARY OF STATE - FISCAL YEAR 2013

Secretary of State (Agency 130)

Fund No.	Fund Title	Beginning Cash Balance	Receipts/ Transfers-in	Disbursements Transfers-out	Ending Cash Balance
0001	General Fund*	\$ 2,267,300		\$ 2,112,633	\$ 154,667
0120-04	Consolidated Elections Fund	1,370,176		52,229	1,317,947
0348-27	Democracy Fund	3,728,985	172,167	792,773	3,108,379
0349-33	Health Care Directive Registry Fund	37,471	157	1,490	36,138
TOTALS		\$ 7,403,932	\$ 172,324	\$ 2,959,125	\$ 4,617,131

Commission on Uniform Laws (Agency 131)

Fund No.	Fund Title	Beginning Cash Balance	Receipts/ Transfers-in	Disbursements Transfers-out	Ending Cash Balance
0001	General Fund	\$ 40,981	\$ 19	\$ 41,000	

Idaho Code Commission (Agency 133)

Fund No.	Fund Title	Beginning Cash Balance	Receipts/ Transfers-in	Disbursements Transfers-out	Ending Cash Balance
0349	Miscellaneous Revenue Fund**	\$ 842,210	\$ 720,909	\$ 337,400	\$ 1,225,719

*The ending balance includes encumbrances of \$23,372 and a reversion of \$131,295.

**The ending balance includes encumbrances of \$431,333.

OTHER INFORMATION

We discussed other issues which, if addressed, would improve internal control, compliance, and efficiency.

This report is intended solely for the information and use of the State of Idaho and the Office of the Secretary of State and is not intended to be used by anyone other than these specified parties.

A copy of this report is available at <http://www.legislature.idaho.gov/audit/auditsummaries.htm> or by calling 208-334-4832.

We appreciate the cooperation and assistance given to us by the Secretary of State, Lawrence Denney, and his staff.

ASSIGNED STAFF

Patrick Aggers, CPA, CFE, Managing Auditor
Randena P. Darpli, CPA, CGFM, In-Charge Auditor
Justin Powell, Staff Auditor

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FINDINGS AND RECOMMENDATIONS

FINDING 1 – The Office is not assessing liabilities as required by Idaho Code Section 67-6625A.

Criteria: Idaho Code Section 67-6625A provides that any person who fails to file a statement required by the Sunshine Law on or before the specified due date shall be liable to the Secretary of State in the amount of \$50.00 per day after the deadline until the statement is filed. The code allows the Secretary to impartially opt to not enforce the liability if he determined that the late filing was not willful and that enforcement would not further the purposes of the Sunshine Law. However, the code section goes on to state that no liability shall be waived if a statement is not filed within five days after receiving written notice of the filing requirement from the Secretary of State (Secretary).

Condition: We selected 10 candidates, committees, and lobbyists (filers) who were sent notices of filing requirements indicating the late filing fees and that they had five days to file. For one of the filers, the required report had not been filed as of April 2014. However, the Office had only assessed a liability in the amount of \$50 total rather than \$50 per day since the deadline of January 31, 2013, passed. The filer had also not filed a report that was due January 31, 2012, and had also been assessed only a \$50 fine for that report.

We were informed by the Office that the Secretary rarely enforces a liability as the late filings are generally not willful and the enforcement of the liability would not further the purposes of the Sunshine Law because the focus is on obtaining the statement or report rather than the fee. The initial letter sent notifying persons of the filing requirement clearly indicated the \$50 per day fine; however, in most cases where the Secretary opts to enforce the liability, it is enforced at a flat fee of \$50 rather than \$50 per day. This practice is followed whether or not the statement is filed within five days of the person's receipt of written notice of the filing requirement from the Office.

Cause: The Office explained that the Secretary has opted to not assess liabilities to non-filers because the intent of the Sunshine Law was disclosure not revenue generation.

Effect: The Office has not enforced the required liability for a filer who has not filed reports required by Idaho Code Section 67-6625A. The statute specifically states that no liability shall be waived if the report is not filed within five days after receiving written notice of the requirement. This portion of the law does not appear to be enforced, and the associated liability for the accrued penalty is approximately \$43,000.

Recommendation: We recommend that the Office assess liabilities as required by Idaho Code Section 67-6625A.

Agency Response: *We concur with the finding that the office has not assessed fines of \$50.00 per day for every day that a person was late in filing his or her Sunshine Report. The law does give some discretion to the Secretary of State in imposing the fine. The purpose of the Sunshine Law is to get disclosure of those giving financial support to campaigns and of those promoting or opposing legislation. The \$50.00 fee has been effective in getting disclosure. The office has, however begun assessing the \$50.00 per day fee after a notice of filing has been issued.*

FINDING 2 – Internal control weaknesses exist in federal grant accounting and program compliance.

Criteria: The Office of Management and Budget (OMB) *Circular A-102 Grants and Cooperative Agreements With State and Local Governments (Common Rule)* requires that non-federal entities receiving federal awards establish and maintain internal controls designed to reasonably ensure compliance with federal laws, regulations, and program compliance requirements.

OMB *Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments (Cost Principles)* establishes principles and standards for determining costs for federal awards carried out through grants and requires that, where employees work on multiple activities or cost objectives, a distribution of their salaries or wages be supported by personnel activity reports or equivalent documentation which 1) reflects an after the fact distribution of the actual activity of each employee, 2) accounts for the total activity for which each employee is compensated, 3) is prepared at least monthly and coincides with one or more pay periods, and 4) is signed by the employee.

The *Cost Principles* also prohibit non-federal entities from contracting with or making subawards under covered transactions to parties that are suspended or debarred.

OMB *Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations* requires pass-through entities to identify federal awards made by informing each subrecipient of the CFDA title and number, award name and number, award year, whether or not the award is for research and development, and the name of the federal agency.

Finally, 45 CFR 74.53(b) requires that financial records, supporting documents, and other records pertinent to an award be retained for a period of three years from the date of submission of the final expenditure report.

Condition: The following conditions were noted during our review:

- The Office paid one employee with federal funds; however, a personnel activity report or similar documentation that would support the allowability of these activities for federal reimbursement was not prepared or retained.
- Documentation of the Office's efforts to ensure vendors are not suspended or debarred prior to award was not maintained. Additionally, the suspension or debarment status of subrecipients was not verified.

- Subrecipients were not provided with the CFDA title and number, award name and number, award year, whether or not the award was for research and development, and the name of the federal agency.
- The Federal Financial Report for the federal fiscal year ended September 30, 2012, contained information that could not be traced to the accounting records or to supporting documentation.

Cause: The Office was unaware of the requirements associated with federal funding compliance.

Effect: Failure to prepare and maintain adequate supporting documentation for federal expenditures and reports, along with other noncompliance, could result in unallowable costs, and the Office may be required to return funds to the federal grantor.

Recommendation: We recommend that the Office implement internal controls sufficient to comply with federal grant regulations and reduce the risk of errors or omissions.

Agency Response: *The Secretary of State is incorporating federal funding policies and procedures into the procedure manual for the office. In doing so, the staff is working more closely with the Elections Assistance Commission to include their recommendations and best practices that they have found in other states. This will help assure that the requirements are met.*

AGENCY RESPONSE



STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
LAWRENCE DENNEY

April 23, 2015

April Renfro, Manager
Legislative Audits
Statehouse Mail

Dear Ms. Renfro,

We concur with the finding that the office has not assessed fines of \$50.00 per day for every day that a person was late in filing his or her Sunshine Report. The law does give some discretion to the Secretary of State in imposing the fine. The purpose of the Sunshine Law is to get disclosure of those giving financial support to campaigns and of those promoting or opposing legislation. The \$50.00 fee has been effective in getting disclosure. The office has, however begun assessing the \$50.00 per day fee after a notice of filing has been issued.

The Secretary of State is incorporating federal funding policies and procedures into the procedure manual for the office. In doing so, the staff is working more closely with the Elections Assistance Commission to include their recommendations and best practices that they have found in other states. This will help assure that the requirements are met.

We appreciate working with your staff and the help they have given us in meeting the requirements imposed with federal funds.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence Denney", is written over the printed name and title.

LAWRENCE DENNEY
Secretary of State

LD/lm

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APPENDIX

HISTORY

During Idaho's territorial period (1863-1890), the functioning Secretary of State was the Secretary of the Territory, appointed by the President of the United States. A large amount of executive authority was vested in the Secretary. In addition to the duties as official secretary and record keeper, the Secretary also handled territorial funds and served as Governor when the Governor was absent. When Idaho gained statehood in 1890, the Office of the Secretary of State was one of the elective offices provided for in the Idaho Constitution. J.J. Pinkham was the first elected Secretary of State and served for two years.

Beginning with the 1947 term, the elected term of office was increased from two to four years. Lawrence Denney, the current Secretary of State, took office on January 5, 2015.

PURPOSE

Secretary of State

The purpose of the Office of the Secretary of State is to carry out the many duties and responsibilities assigned by the Idaho Constitution and Idaho law. The Constitution specifically makes the Secretary of State the custodian of the State seal and provides that the Secretary must countersign all grants and permissions. Furthermore, it makes the Secretary of State a member of both the State Land Board and the State Board of Examiners. The Secretary is also a permanent member of the State Board of Canvassers.

In addition to its constitutional duties, Idaho law gives the office other duties and responsibilities. In general, the Secretary of State is the official record keeper of the State, which includes responsibilities for filing, recording, attesting, certifying, and printing certain documents.

Idaho Code, Section 34-201 designates the Secretary of State as the State's chief election officer, with the responsibility to obtain and maintain uniformity in the application, operation, and interpretation of election laws.

The Secretary of State is charged with implementing the federal Help America Vote Act of 2002, dealing with election reform, including management of the "Democracy Fund" established by Idaho Code, Section 67-916. The Democracy Fund was created to provide funding to improve election systems and procedures as required by the Help America Vote Act of 2002. The fund consists of money received from the federal government, the State legislature, and various Idaho counties, and has been continuously appropriated to the Secretary of State's Office for the purpose of paying the expenses to carry out the activities of the act. (Idaho Code, Section 67-916.)

The Commercial Division of the Office of the Secretary of State is responsible for filing and reporting several different types of lien notices on personal property. Under Article 9 of the UCC (Idaho Code, Title 28, Chapter 9), a creditor may file a financing statement to perfect a security interest in collateral in the possession of a debtor. Pursuant to implementing State legislation, a creditor may file a financing statement under the Federal Food Security Act of 1985

to perfect a security interest in the farm products produced by a debtor. Federal agencies, such as the Internal Revenue Service, may file notices of lien on the personal property of corporations and partnerships under the Uniform Federal Lien Registration Act (Idaho Code, Title 45, Chapter 2). Since January 1, 1990, seed suppliers and farm laborers have been able to file notices of liens in crops pursuant to Idaho Code, Title 45, Chapter 3. The Division reports all types of financing statements or notices of lien in response to statutory requests for information. The Division also publishes and distributes to registrants lists of financing statements and notices of liens in crops. State agencies and counties may also file liens for child support, taxes, and medical indigent payment.

The Commercial Division files organizational documents for domestic corporations, limited liability companies, limited partnerships, limited liability partnerships, and applications for certificate of authority for foreign corporations, as well as certain other related documents. All active entities must file an annual report with the Division each year. The Division responds to massive numbers of requests for information by phone, online, mail, and in-person visits. The Division also files assumed business names. Businesses organized in other states and countries that transact business in Idaho also file with the Division.

The administrative secretary processes applications for trademarks and service marks under Idaho Code, Title 48, Chapter 5. The administrative secretary also issues commissions for notaries public under Idaho Code, Title 51, Chapter 1 and responds to numerous inquiries regarding both functions.

The Secretary of State administers and enforces the Sunshine Initiative Act. This Act provides for lobbyists' registration and reporting requirements, as well as campaign disclosure reporting requirements.

The Secretary of State is charged with many other miscellaneous duties and responsibilities, most of which are related to record keeping.

Commission on Uniform Laws

The purpose of this Commission is to draft legislation in areas where uniformity among states appears to be desirable. Members of the Commission attend meetings of the National Conference of Commissioners of Uniform State Laws to draft uniform acts. These drafts are presented to the State of Idaho Legislature for enactment.

Idaho Code Commission

The purpose of this Commission is to enter into and execute all contracts necessary to keep the volumes of the Idaho Code as current as possible. After each legislative session, Commission members are responsible for codifying, into pamphlet form, those laws enacted or repealed during the legislative session. If a volume of the Idaho Code should become too bulky, the Commission is responsible for authorizing the compilation of additional volumes along with printing specifications.

STATUTORY AUTHORITY

Secretary of State

Article IV of the Idaho Constitution states that the Secretary of State shall be a member of the executive department. It further provides that the office shall be elective and the length of term will be four years. Both the Idaho Constitution and Idaho law imply that the Secretary of State may have a staff to help carry out the assigned duties and responsibilities.

The Commission on Uniform Laws

In 1919, the Commission on Uniform Laws was created by the Idaho Legislature. The Act establishing the Commission is codified in Idaho Code, Title 67, Chapter 17.

The Idaho Code Commission

The Idaho Code Commission was created in 1949 by the Idaho Legislature. The Act establishing the Commission is codified as Idaho Code, Title 73, Chapter 2.

ORGANIZATION

As illustrated by the organizational chart at the end of this report, the Office is divided into five general divisions: Legislative and Executive Affairs, Commercial Affairs, Elections; Fiscal; and Information Technology.

Reorganization of State government placed record keeping responsibilities for the Idaho Code Commission and the Commission on Uniform Laws under the Office of the Secretary of State. Each of these commissions retains their own organizational structure which operates independently from the Secretary of State's Office, except for budgetary purposes.

The Commission on Uniform Laws consists of four members of the Idaho State Bar and appointed by the Governor to a four-year term. Current commissioners include: Dale Higer, Mike Brassey, Rex Blackburn, and Bart Davis.

The Idaho Code Commission consists of three members of the Idaho State Bar who are actively engaged in the practice of law and not holders of any other compensated State office or position. The commissioners are appointed to a six-year term by the Governor from a list submitted by the Board of the Idaho State Bar. Current commissioners include R. Daniel Bowen, Andrew Dorman, and Jeremy Pisca. Max M. Sheils, Jr. serves as the Executive Secretary of the Commission. The Secretary of State is the permanent Secretary of the Commission.

FUNDING

The Secretary of State receives a General Fund appropriation to perform all constitutional and statutory functions of the office, including (1) registering the official acts of the legislature and Governor; (2) administering and certifying elections; (3) maintaining a registry of tort claims, extraditions, deeds, official oaths, and gubernatorial appointments; (4) administering the Sunshine Law; (5) maintaining and operating the centralized Uniform Commercial Code as it relates to State, commercial, and farm product filings; (6) filing various types of business entities in the Commercial Division; and (7) processing applications for notaries, trademarks, and servicemarks.

The federal fund consists mainly of money from the U.S. Department of Justice in order for the

Secretary of State to implement the federal Help America Vote Act of 2002. These funds allow the Office to deal with election reform and to improve election systems and procedures. These funds have been continually appropriated to the Office to carry out the activity of the act.

The Secretary of State's Office and the Commission on Uniform Laws receive funding from General Fund appropriations. These funds are used for program operations.

The Idaho Code Commission receives funds from a \$10 fee levied on each civil action filed in district or magistrate court, including matters involving decedents' estates, whether testate or intestate, including proceedings involving adoption and the appointment of a guardian of the person, of the estate, or both. (Idaho Code, Section 73-213.)

ORGANIZATIONAL CHART

OFFICE OF THE SECRETARY OF STATE

